

### **REMARKS**

Claim 9 is objected to because of dependency on itself. Claim 9 is amended to depend from claim 1. Such correction is typographical in nature, and is not new matter. Support can be found generally in paragraph [0006].

Claims 1-17 are pending in the application; claims 15-17 are allowed; and claims 8, 12, and 13 are indicated as allowable if rewritten in independent form including all the base and intervening claim limitations.

Claims 1-7, 9-11, and 14 stand rejected as anticipated by *Gifford*. Further examination of the application, as amended, and reconsideration of the rejections are respectfully requested.

By way of background, Applicant's invention is directed to a food intake-limiting device having inner and outer elements defining an ingestion chamber and a plurality of openings in the outer element for protrusion of a stomach lining to the inner element. The inner element includes a plurality of retention members to hold the protruding stomach lining.

Regarding claim 1, *Gifford* does not disclose a plurality of openings in the outer element for protrusion of the stomach lining to the inner element, but merely concentric solid rings. The office action alleges Figs. 40A-40D include an outer ring having an opening therein. However neither ring

includes a plurality of openings for the protrusion of a stomach lining to the inner element (e.g., for the protrusion to be retained by retention members of the inner element). At column 49/lines 23-25, *Gifford* teaches the locking features 501, 502 are “[i]ndentations on one flange ring, with corresponding detents on the other flange ring”. One skilled in the art would not equate an indentation to an opening, as an indentation would not allow protrusion of a stomach lining.

The office action further alleges the openings at each end of the outer ring of *Gifford* are the equivalent of the plurality of openings in the outer element for protrusion of the stomach lining. Assuming arguendo this to be true, the ingestion chamber would not have a “proximal entry opening” as recited in claim 1 because the stomach lining would protrude into each end of the ring and no separate *entry opening* is taught or suggested. *Gifford* so modified would create an impermissible total blockage of the stomach.

Nor would Applicant’s claimed invention have been obvious in light of *Gifford*. *Gifford* is directed to “devices and methods for surgically performing an end-to-side anastomosis of hollow organs. More particularly, it relates to vascular anastomosis devices for joining the end of a graft vessel, such as a coronary bypass graft, to the side wall of a target vessel, such as the aorta or a coronary artery”, as recited in the Field of the

Invention thereof. *Gifford* also states in the Background that “[a]nastomosis is the surgical joining of biological tissues, especially the joining of tubular organs to create an intercommunication between them”.

*Gifford* makes no reference to a food intake-limiting device, but in sharp contrast is directed to a connector for joining biological tissue, for example. There is no teaching or suggestion of a food intake-limiting device having a plurality of openings in an outer element and a plurality of retention members to hold a stomach lining protruding through the plurality of openings in the outer element. The different structure, coupled with the different function (i.e., weight loss versus vascular anastomosis) illustrate the non-obviousness of Applicant’s claimed invention in light of *Gifford*.

As to claim 2, *Gifford* does not teach or suggest nested baskets. As to claim 3, *Gifford* does not teach or suggest mesh. As to claims 7 and 11, *Gifford* does not teach or suggest a distal end ring in the outer element or a proximal end ring in the inner element. As to claim 9, *Gifford* does not teach or suggest mesh openings.

As to independent claims 10 and 14, *Gifford* does not teach or suggest mesh openings, let alone spikes mounted on an inner basket adjacent the mesh openings in the outer basket. *Gifford* only teaches solid rings. Nor

does the office action offer any reasoning to even establish a prima facie case of obviousness for claims 2-7, 9-11, and 14 above.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. If any issues remain that are appropriate for resolution, please contact undersigned counsel.

Respectfully submitted,

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